

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

AUGUSTIN CARLOS MARTINEZ,

Plaintiff,

v.

Civ. No. 19-422 JCH/GJF

JESSIE PHELPS, et al.,

Defendants.

ORDER TO SHOW CAUSE


THIS MATTER is before the Court *sua sponte*. Plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915 in connection with his prisoner civil rights complaint. ECFs 1-2. The Court granted Plaintiff's *in forma pauperis* application—but required him to, no later than February 14, 2020, either make an initial partial payment of \$16.88¹ or show cause why such payment should be excused. ECF 3. Although Plaintiff had a sufficient account balance to make this payment, *see* ECF 2, he has neither made such payment nor shown cause as to why he should be excused from doing so. Instead, he has spent his money on commissary purchases. *Id.*²

IT IS THEREFORE ORDERED that Plaintiff show cause, **no later than April 24, 2020**, as to why this case should not be dismissed for failure to comply with the Court's order [ECF 3]. Failure to show cause or otherwise respond to this instant order may result in dismissal of this case under Rule 41(b) of the Federal Rules of Civil Procedure.

¹ This amount represents a required “20 percent of . . . the average monthly deposits” to Plaintiff's prison account. 28 U.S.C. § 1915(b)(1); ECF 2.

² *See Baker v. Suthers*, 9 Fed. Appx. 947, 949 (10th Cir. 2001) (unpublished) (observing that “when a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee”); *Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997) (noting that “requiring prisoners to make economic decisions about filing lawsuits does not deny [them] access to the courts; it merely places the indigent prisoner in a position similar to that faced by those whose basic costs of living are not paid by the state”).

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE